IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1056 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GURUDEVSINGH AMARSINGH

Versus

LALCHAND JYOTMAL SANTANI

Appearance:

MR BA SURTI for Petitioners

MR JC GOHIL for Respondent No. 1

MR ST MEHTA APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/04/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties. The petition is filed with a prayer to quash the proceedings

of Criminal Case (M.Case) No.78 of 1992 pending before the 10th Metropolitan Court, Ahmedabad, on the basis of the FIR lodged at the Gomtipur Police Station by the respondent No.1.

2. The petitioners are the proprietors of a firm in which the respondent was employed. According to the FIR, on 25.9.1992, the petitioners had forcibly taken signature of the complainant on a resignation and, after threatening him with life, thrown him out saying words of abuse to him. It is stated in the complaint that the complainant had signed on revenue stamps in Sindhi language and after being so discharged from service, he was told that nothing was due and payable to him. Thus, a complaint alleging offences under Sections 386 and 114 of the Indian Penal Code had come to be registered against the petitioners. The petitioners contended that the respondent had also filed a complaint before the Labour Commissioner and demanded compensation of Rs.7,750. A compromise was reached in that case in the presence of the Assistant Labour Commissioner and payment of Rs.7,750 was made to the respondent. A receipt purporting to be signed by the respondent acknowledging receipt of Rs.7,750 towards full and final settlement of the dues is also produced on record. The petitioners have relied upon another document purporting to have been signed by the respondent as well as someone on behalf of the employer, which states that the respondent - workman will withdraw the complaint before the Labour Commissioner and will also withdraw the criminal complaint which might have been filed by him. It has to be noted here that this document annexed with the petition is dated 18.11.1992, which is a photocopy and not the original and the signature purporting to be that of the respondent - workman is in Gujarati and in no way resembles the signature on the receipt mentioned earlier.

3. On the basis of these facts, it is vehemently contended on behalf of the petitioners that the respondent workman had fully and consciously settled all his disputes and dishonestly failed to withdraw the criminal complaint with a view to harass the petitioners. It is further submitted that the chances of conviction of the petitioners for the offences punishable under Sections 386 and 114 of the IPC are bleak and hence they need not be tried for these offences. On the whole, the grievance of the petitioners appears to be that the respondent workman did not keep his word, according to which the criminal complaint ought to have been withdrawn.

4. The learned advocate Mr.J.C.Gohil appearing for the respondent workman has submitted that, after the commission of the offence as alleged in the FIR and after being jobless at an advanced age, the respondent had no alternative but to accept the amount offered to him in his case before the Labour Commissioner and he had only signed to acknowledge the receipt of the amount towards his legal dues. It is submitted that the respondent has not and did not have any intention to withdraw the criminal complaint and that there is no ground to quash the criminal proceedings.

5. Going through the record, it, prima facie, appears that the respondent was serving under the petitioners and disputes had arisen among them. After the alleged incident of taking of signature by force on 25.9.1992, the respondent workman seems to have taken recourse to his remedies under the Labour Laws also. If some settlement is arrived at pursuant to the case before the labour enforcement machinery, it cannot by itself bind the respondent workman to withdraw his criminal complaint. Moreover, the photocopy produced by the petitioners in support of the submission that the workman had voluntarily agreed to withdraw the criminal complaint also does not, prima facie, bear his signature and the learned advocate for the workman has disputed the genuineness of the document.

6. In the facts of the present case, it cannot be said that a prima facie case is not made out in the FIR to proceed against the petitioners. In any case, it is not one of those rare cases in which the extraordinary powers of this court can be invoked for quashing the criminal proceedings at the initial stage. For these reasons, the Criminal Miscellaneous Application is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

Sd/-

(KMG Thilake)

$$$$$$$$$